

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 10013 of 2005(P)

PETITIONER:

**P. VISWANATHAN, S/O. PADMANABHAN,
NEELIKKADU HOUSE, CHATHANADU,
AVALOOKKUNNU P.O., ALAPPUZHA DISTRICT.**

BY ADV. SRI.T.K.AJITH KUMAR

RESPONDENTS:

**1. THE DISTRICT COLLECTOR,
ALAPPUZHA.**

**2. THE TAHSILDAR, AMBALAPPUZHA TALUK,
ALAPPUZHA DISTRICT.**

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C) NO.10013/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- CERTIFICATE ISSUED BY THE VILLAGE OFFICER, MULLAKKAL DT. 20.8.01.

EXT.P2:- COPY OF THE CERTIFICATE ISSUED BY THE 2ND RESPONDENT DT. 25.8.01.

EXT.P3:- COPY OF THE PASSED BY THE 1ST RESPONDENT DT. 18.10.04.

EXT.P4:- COPY OF THE APPLICATION AND THE ORDER OF THE C.J.M., ALAPPUZHA DT. 28.11.2000.

EXT.P5:- COPY OF THE CERTIFICATE ISSUED BY SRI.MR.H.K.CHAKRAPANI.

/TRUE COPY/

P.A. TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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W.P.(C).No. 10013 of 2005 (P)
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Dated this the 26th day of July, 2007

J U D G M E N T

The petitioner is challenging the denial of sanction of the Kerala Freedom Fighters Pension. The petitioner had actively participated in the Punnapra-Vayalar struggle. According to the petitioner, an arrest warrant was pending against the petitioner in Case No.P.E.7/1122 ME and in order to avoid arrest, he absconded himself. Even though he had filed an application in the year 1981, it could not be traced out. He submitted another application on 18/02/2001, which was numbered as H4/2584/01. Ext.P1 is the report of the Village Officer, Mullakkal, reporting about the fact that he had participated in the said movement. Ext.P2 is a report submitted by the Tahsildar, Ambalapuzha, to District Collector, Alappuzha, stating that the petitioner had actively participated in the freedom struggle. Along with Ext.P2, a statement to the above effect from Sri H.K.Chakrapani, a prominent freedom fighter, was also enclosed. But in Ext.P3, he was informed by the District Collector that apart from producing the certificate from H.K.Chakrapani, he has not produced any

records from the jail or court. Even thereafter the petitioner submitted a copy application before the Chief Judicial Magistrate, Alappuzha, on 24/11/2000, for getting a copy of the warrant issued against the petitioner. But the same has been rejected as per Ext.P4 stating that the records are not available. Ext.P5 is the Personal Acknowledge Certificate from Sri.H.K.Chakrapani, who is a recipient of Central Freedom Fighters Pension.

2. The respondents have filed a counter affidavit wherein it has been stated that in view of Circular No.57183/FFP B1/GAD, dated 31/12/1993, the petitioner should have produced documentary evidence from official records, such as warrant of arrest, court records, jail records clearly showing the applicant's sufferings in connection with the freedom struggle. It is stated therefore, that the application has been rejected. The reliance placed on Circular dated 31/12/1993 to reject the application is not correct. The circular cannot modify the general provisions of the scheme. It is well settled that a Circular cannot modify or run counter to the provisions of the Statutes, rules, notifications,

etc.. Therefore, the rigour of the circular cannot be put against the petitioner, who is a bona fide freedom fighter going by the records produced herewith. The learned counsel for the petitioner has relied upon the judgment of this Court in O.P.No.26694/2003. That was filed by Sri P.K.Chellappan, who had also relied upon the jail records and personal knowledge certificates of Sri.Kittan Chakrapani (H.K.Chakrapani) and as per the judgment dated 10/07/2006, in O.P.No.26694/2003, this Court directed the first respondent to re-consider the claim of the petitioner therein in view of the relevant certificates related to Sri.Kittan Chakrapani. It is submitted that the petitioner therein had subsequently been granted pension by the State Government.

3. The learned counsel for the petitioner submitted that the jail records of Sri Kittan Chakrapani are available and, therefore, the petitioner may be given an opportunity to produce the same before the respondent-Government.

Therefore, if the petitioner files a detailed representation along with additional materials as referred to above, the same shall be considered and appropriate sanction be issued granting the pension. Needless to state that a claim for pension under the Kerala Freedom Fighters scheme should be considered in the light of the laudable object of the scheme and a liberal approach ought to be taken in such cases. In this case, it is evident from Exts.P1 and P2 that the petitioner is a bona fide freedom fighter. Therefore, his claim cannot be rejected on technical reasons. The first respondent shall pass orders in the light of the above observations also. If the petitioner produces the additional materials within a period of one month from today, the first respondent shall pass appropriate orders within a period of two months thereafter.

The writ petition is disposed of accordingly. No costs.

T.R.RAMACHANDRAN NAIR,
Judge

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